

Part A CCR Final Rule

Summary of the Part A Final Rule

The Part A final rule was published in the Federal Register on August 28, 2020 and becomes effective on September 28, 2020. The main purpose of the final rule was to address portions of the *USWAG* and the *Waterkeeper* decisions and to enhance public access to information related to CCR facilities. The rule covered these main topics: revising the definition of a lined CCR surface impoundment, implementing the partial vacatur from the *USWAG* decision on the forced closure of all unlined CCR surface impoundments, completing the reconsideration of the cease receipt of waste deadline, revising the alternative closure provisions, amending the requirements for annual groundwater monitoring and corrective action reports, and revising the publicly accessible CCR Internet site requirements.

Revisions to the Definition of a Lined CCR Surface Impoundment

This rule finalizes revisions to implement the *USWAG* decision about the definition of a lined CCR surface impoundment. This rule removes the classification of compacted-soil lined or “clay-lined” surface impoundments from those considered lined. The effect of these revisions is that all “clay-lined” surface impoundments are now considered unlined.

Implementing the Partial Vacatur from the *USWAG* Decision

The *USWAG* decision partially vacated the closure requirements for CCR surface impoundments so that all unlined CCR surface impoundments must initiate closure and cease receipt of waste. The final rule specifies that all unlined surface impoundments are required to retrofit or close, not just those that have detected groundwater contamination above regulatory levels.

Reconsideration of the Cease Receipt of Waste Deadline

In light of the *USWAG* and the *Waterkeeper* decisions EPA needed to reconsider the cease receipt of waste deadline. This rule established a revised date, April 11, 2021 to replace October 31, 2020, by which unlined surface impoundments or those that failed the aquifer location restriction must cease receiving waste and initiate closure or retrofit. EPA determined this new date after a careful analysis of the considerable amount of planning and construction timeline data submitted during the public comment period.

Revisions to the Alternative Closure Provisions

EPA finalized new provisions to the alternative closure provisions (§257.103(f)(1) and (f)(2)) that would grant facilities additional time to cease receiving waste and initiate closure of their surface impoundments. The owner or operator must submit a demonstration to EPA for approval no later than November 30, 2020 in order to operate under the new alternative closure provisions. There are two new alternative closure provisions:

1. Site specific alternative to initiation of closure deadline due to lack of disposal capacity (§ 257.103(f)(1)). This provision allows a CCR surface impoundment to continue to receive CCR and/or non-CCR wastestreams while the facility completes development of alternative capacity. To be approved, the owner or operator must submit a demonstration that shows the following:

- a. No alternative disposal capacity is available on or off-site;
 - b. That CCR and/or non-CCR wastestreams must continue to be managed in the CCR surface impoundment because it is technically infeasible to obtain alternative capacity either on- or off-site by April 11, 2021 (facilities that failed multiple location restrictions will be limited to CCR wastestreams);
 - c. Documentation that the facility is in compliance with all the requirements of the CCR rule; and
 - d. An extensive workplan that shows how the facility will complete development of alternative capacity no later than October 15, 2023 or October 15, 2024 for eligible unlined CCR surface impoundments¹
2. Site specific alternative due to permanent cessation of coal-fired boiler(s) by a date certain. (§ 257.103(f)(2)). This provision allows a CCR surface impoundment to continue to receive CCR and/or non-CCR wastestreams due to the facility permanently ceasing generation of their coal fired boilers and can meet the completion of closure dates. To be approved, the owner or operator must submit a demonstration that shows the following:
 - a. No alternative disposal capacity is available on- or off-site;
 - b. A risk mitigation plan describing the measures that will be taken to expedite any required corrective action;
 - c. Documentation that the facility is in compliance with all the requirements of the CCR rule; and
 - d. Documentation showing the closure deadline will be met by submitting a closure plan and a narrative that specifies and justifies the date by which they intend to cease receipt of waste in the unit. Closure must be completed no later than October 17, 2023 if 40 acres or less or October 17, 2028 if greater than 40 acres

Amendments to the annual groundwater monitoring and corrective action report and the requirements for the publicly accessible CCR Internet sites (from August 2019 proposed rule)

- Revising the annual groundwater monitoring and corrective action report requirements to make the data easier for the public to understand and evaluate, including a requirement to describe the results in an upfront executive summary.
- Revising the CCR website requirements to ensure that relevant facility information required by the regulations is immediately available to the public.

¹ An eligible unlined CCR surface impoundment is an existing CCR surface impoundment that meets the following conditions: (1) The owner or operator has documented that the CCR unit is in compliance with the location restrictions, (2) The owner or operator had document that the CCR unit is in compliance with the periodic safety factor assessment requirements, and (3) no constituent in Appendix IV to part 257 has been detected at a statistically significant level exceeding a groundwater protection standard.